

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 21 is rejected under 35 U.S.C. 101 because the preamble is directed towards the computer program product. The absent an explicit definition for the phrase "a program product", then the Office takes the broadest reasonable interpretation which is: a produced computer program. Therefore, claim 21 is merely a program claim per se.

Claim 21 also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a "a program product comprising a computer readable medium having embodied therein a computer program for storing data " asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

### ***Allowable Subject Matter***

2. Claims 7 and 14 are allowed.

The following is a statement of reason for the indication of allowance:

Applicant's independent claims 7 and 14: The present in invention is directed to an access point operable to provide wireless network access to client devices coupled to a wireless network, and a controller capable of automatically choosing one of a plurality of radio frequencies on which to operate, said controller choosing said

frequency after evaluating frequencies on which other access points operate, the independent claim identifies the patentably distinct feature "a) logic for picking a frequency; b) logic for transmitting on said frequency; c) logic for receiving on said frequency; d) logic for evaluating whether other access points are heard on said frequency; e) logic for reducing transmission power; f) logic for evaluating whether said other access points are still heard on said frequency; g) logic for storing the transmission power at which no other access points are heard; h) logic for picking a next frequency as the frequency and repeating steps b-g until all of the plurality of frequencies has been picked; i) logic for comparing said stored transmission powers; j) logic for choosing for operation the frequency associated with the highest stored transmission power". Applicant's independent claims 7, 14 and 21 comprise a particular combination of elements, which is neither taught nor-suggested by prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submission should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KHAI M. NGUYEN whose telephone number is (571)272-7923. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harper, Vincent P. can be reached on 571.272.7605. The fax phone

Art Unit: 2617

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/VINCENT P. HARPER/  
Supervisory Patent Examiner, Art Unit 2617

/Khai M Nguyen/  
Examiner, Art Unit 2617

2/9/2009